Before the
Federal Communication Commission
Washington, D.C. 20554

In the Matter of	)	**CC Docket No. 01-92**
	)	
Developing a Unified Intercarrier Compensation Regime	)	
	)	

REPLY COMMENTS OF MID-RIVERS TELEPHONE COOPERATIVE, INC., REGARDING THE MISSOULA PLAN FOR INTERCARRIER COMPENSATION REFORM

Mid-Rivers Telephone Cooperative, Inc. (MRC) hereby files its reply comments in connection with the Commission's proceeding on the Missoula Plan (Plan) for Intercarrier Compensation Reform.

<u>Summary</u>

First, MRC is most concerned about the introduction of a new issue by AT&T, a Plan supporter, in the recent comments submitted by the Plan Supporters. AT&T has now suggested that the Commission should treat the Restructure Mechanism (RM) amounts developed in the Plan as Universal Service support under Section 254 of the Act. The effect of this new provision would be a limitation on the replacement revenues that are developed by the Plan for certain carriers, in particular rural CLECs.

According to the Plan itself, the RM is intended to compensate all carriers for the revenues that are lost through the reduced intercarrier compensation rates called for in the Plan. Treating the RM as Universal Service support sets the ILEC RM as the portable support amount which would be available to a rural CLEC instead of an RM calculated using the rural CLECs loss of access revenue. This amount would be insufficient to recover the revenue loss realized by rural CLECs since rural CLEC access rates are generally higher than those of an incumbent Track 1 ILEC due to the rural only cost structure of the rural CLEC. Additionally, Universal Service support is only available to ETCs. Rural CLECs that are not ETCs are required under the Plan to reduce their access rates, but they would have no option to replace the lost revenue under AT&T's approach.

This new position is contrary to the Plan's fundamental philosophy of replacing revenues lost in intercarrier rate reductions through other sources as described in the Plan's Executive Summary and the Plan itself.

The adoption of this change to the Plan would cause great harm to rural CLECs and their subscribers, and it would make the Plan unacceptable to MRC.

Second, MRC would like to add its support to the comments of certain other participants.

MRC is a member of the Rural Independent Competitive Alliance (RICA), and MRC supports the comments of RICA in their entirety.

Additionally, MRC supports the comments of the National Telecommunications Cooperative Association (NTCA) in regard to the following issues.

- Its opposition to the establishment by the Commission of the RM under Section 254, and the treatment of RM revenue as Universal Service support.
- Its advocacy of Track 3 treatment for Track 1 rural exchanges acquired by Track 3 rural companies.
- Its advocacy of NECA participation for exchanges granted ILEC status by the Commission under Section 251(h)(2) of the Act.
- Its advocacy for the extension of the rural exemption for access rates charged by Rural CLECs.[1]

Third, MRC would like to reemphasize its initial comments in light of the comments of the Plan Supporters. While the Plan Supporters claim that the Plan is comprehensive, the Plan itself states that it is incomplete as parts of the plan are yet to be developed. The Plan therefore cannot be adopted as filed, and it requires further work by the Commission to fill the gaps left by the developers of the Plan.

In particular MRC is concerned that the rules and procedures governing the computation and distribution of the RM amounts for rural facility based CLECs are not determined.[2] The proposed Plan simply states that the circumstances under which RM amounts will be available to non-ILECs will be determined in the future.[3] It is essential that the Commission establish the necessary policy and rules that will govern the distribution of RM amounts to rural facility based CLECs before the Plan is adopted. The Plan is unacceptable to MRC without these needed rules and procedures.

Finally, MRC would like to propose a general outline for the calculation of RM amounts for newly established rural CLECs or new rural CLEC activities in new exchanges. As with other access elements, the Commission must establish rules governing the appropriate level of the RM amount for new companies or for existing companies expanding their operations into new areas. This is most important for rural CLECs since

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[1] 7th Report and Order and Further NPRM in Docket CC 96-262, Reform of Access Charges Imposed by Competitive Local Exchange Carriers.

[2] The contribution mechanism required to fund the RM is also not established in the proposed Plan. However, this issue will need to be addressed for the entire industry, and MRC does not choose to comment on this issue at this time.

[3] Missoula Plan, Section VI.A.2.

the access levels permitted for rural CLECs are generally higher than the incumbent Track 1 ILEC.

The Restructure Mechanism is an Access Element and not Universal Service Support

The Plan as originally filed did not address which Section(s) of the Telecommunications Act that the Commission should use as its authority to order the establishment of the RM. The Plan Supporters have now raised this issue in their comments. According to the Supporter comments, RM amounts will be 'portable' if the Commission chooses to authorize the RM under Section 254 of the Act. 'Portable' here means that the RM amounts are determined solely by the ILEC serving an area. The amounts are then available under certain circumstances to other ETCs. Conversely, should the Commission choose to authorize the RM amounts under Sections 201 and 205 of the Act, the RM amounts would not be 'portable', and RM amounts for non-ILECs would be calculated by the non-ILEC entity under rules and procedures not yet determined.

The supporters, however, take both sides of the issue as there is disagreement amongst the Supporters on this issue. Attachment B of the Supporters comments prepared by the Rural Alliance argues that RM amounts should not be 'portable' while Attachment C prepared by AT&T argues that they should be.

AT&T's Proposal is Inconsistent with the Intent of the Plan

The Plan's Executive Summary, as well as the Plan itself, presumably developed with AT&T's input and assistance, calls for carriers to be given the opportunity through increases in end user changes and RM to replace access revenues lost through the access rate reduction process. The Executive Summary explains that,

> "The Plan gives carriers an opportunity to recover lost intercarrier compensation revenues through supplemental sources of recovery. These sources include increased subscriber line charges ("SLCs") as well as a new Restructure Mechanism, which is designed specifically to replace switched carrier-to-carrier revenues lost by carriers participating in the Plan and not otherwise compensated for that loss through end-user charges."[4]

The summary of the RM in the Plan document restates this intent,

> "The Plan creates the Restructure Mechanism, a source of recovery designed to replace most of the intercarrier revenues lost by carriers, to the extent that such revenues are not recovered through increased SLC rates or restructured intercarrier charges, as discussed above ..."[5]

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[4] Missoula Plan Executive Summary, page 1, paragraph 3.
[5] Missoula Plan, Section VI, page 63, Summary.

AT&T's position in Attachment C now completely changes the intent of the Plan for non-ILECs, and rural CLECs in particular, by substituting an RM calculation reflecting the access losses of an ILEC for an RM calculation reflecting the access losses of a non-ILEC carrier.

AT&T's Proposal is beyond the Scope of this Proceeding

In Attachment C of the Supporters comments, AT&T asserts that there is an existing implicit subsidy within access rates, and that the Commission must address the subsidy in this proceeding. AT&T simply states that "Access charges clearly are a source of universal service support."[6]

First, it must be recognized that all subsidies have been eliminated from interstate access through the Commission's actions related to the MAG and CALLS proceedings. With regard to subsidies in intrastate access, it is possible that some or many states have continued to include implicit subsidies in intrastate access rates. However, implicit intrastate subsidies are not limited to access rates. There can be little doubt that urban local rates provide significant subsidies to the rural local rates of large ILECs such as AT&T.[7] AT&T's argument that the Commission in considering the Plan must preempt state regulators and address some of the remaining implicit subsidy in intrastate rates under Section 254 would lead to a conclusion that all intrastate rates, including local rates, must be immediately cleansed of implicit subsidies by preemptive Commission action as well.

Intrastate local rate subsidies and access rate subsidies, if they exist, can only be addressed on a state by state basis and in a comprehensive manner. Addressing only a part of the intrastate rate scheme could have disastrous results for consumers and service providers in the form of significant local rate increases. AT&T's action is proposed without an investigation to establish the facts and without the participation of the state regulatory authorities. Should the Commission wish to launch such an investigation into the level of non-explicit subsidies in the intrastate rate schemes of the various states, it should be undertaken in a separate docket and in conjunction with the state regulatory agencies.

The Missoula Plan is an attempt to improve an inconsistent and complex system of intercarrier compensation. It proposes a good compromise for all industry participants. It does not purport to fix every intrastate pricing issue in all 50 states. It is simply not practical or prudent to attempt to address any subsidy that might exist in intrastate access charges without addressing the entire subsidy issue in all intrastate rates.

AT&T's attempt to prod the Commission to reach into intrastate rate making in this proceeding is simply a goal too far. The record does not have all of the necessary facts and data on which to base sound decisions. Expansion of the scope of this proceeding to

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[6] Comments of the Supporters of the Missoula Plan, Attachment C, Page 1, Paragraph 2.
[7] See Attachment A.

include the needed data would unnecessarily delay a well thought out compromise that accomplishes a significant amount of improvement.

<u>AT&T's Proposal Would Distort Competition in Rural Areas</u>

Treating the RM as a Universal Service subsidy and making it portable will distort competition in rural areas. In most rural areas competition will be frustrated while in others it will be improperly encouraged.

In effect, treating the RM as a portable Universal Service Support element creates an implicit urban to rural subsidy for both ILECs and CLECs that serve both urban and rural areas. The implicit subsidy is imbedded in the urban / rural cost averaging process that is available to companies serving both urban and rural areas and not to companies serving only rural areas, both ILEC and CLEC.

<u>Rural Areas served by Track 1 ILECs</u>
In the case of rural areas served by a Track 1 ILEC, competition would be frustrated because the RM available to CLECs in these areas would be improperly reduced by the Track 1 ILEC's access cost averaging. It would therefore not be representative of rural only costs. Since a rural CLEC does not have access to the same cost averaging mechanism as the Track 1 ILEC, rural CLECs would be unable to compete.

Where competition from rural CLECs like MRC has flourished, the rural CLEC would realize severe reductions in revenue as the available RM based on averaged ILEC access rates would not make up for the required reduction in rural CLEC access rates that were reflective of rural high costs. This would have a chilling effect on expansion plans, and the viability of the existing rural CLEC operation would be threatened.

Where competition has not yet developed, the Track 1 rural ILEC consumers would be doomed to continue receiving the mediocre levels of service that they have been forced to endure.

<u>Rural Areas served by Track 3 ILECs</u>
Conversely, competition would be disproportionately encouraged in rural areas served by Track 3 ILECs. These areas would be more attractive to competition because of the higher RM that would be available.

Rural CLECs would have an opportunity to recover an RM that is more reflective of their rural only costs. However, non-rural CLECs would be overcompensated as they would receive an RM reflecting rural only costs while enjoying the same urban / rural cost averaging that is available to Track 1 ILECs.

<u>The Rural Alliance Proposal is Consistent with the Plan's Intent</u>

The stated intent of the RM was to make up any shortfall created by the reduction in access charges that was not covered by the increase in end user charges or in the case of non-ILECs, retail end user rates. AT&T's new position changes the character of RM for non-ILECs, and the Commission should reject AT&T's position.

The position outlined in Attachment B to the Supporters comments is consistent with the fundamental intent of the Plan.

While we agree with the principle of the Rural Alliance position that the RM should be computed by individual companies and that it is not portable, the proposed Plan is incomplete as it does not specify the processes and procedures for the computation and payment of RM amounts to any carriers except ILECs.

Support of the RICA's Comments

MRC is a member of RICA, and it supports the comments of the RICA in their entirety.

Support of the NTCA's Comments

MRC supports the comments of the NTCA in regard to the following issues.

- Its opposition to the establishment by the Commission of RM amounts under Section 254, and the treatment of those amounts as Universal Service support.
- Its advocacy of Track 3 treatment for Track 1 rural exchanges acquired by Track 3 rural companies.
- Its advocacy of NECA participation for exchanges with Commission granted ILEC status under Section 251(h)(2) of the Act.
- Its advocacy for the extension of the rural exemption for access rates charged by Rural CLECs.[8]

RM is not Universal Service Support

MRC's arguments to support this position have been provided above in these reply comments. We further join with the NTCA in supporting its arguments as well.

Track 3 Classification for Rural Exchanges Acquired by Rural Companies

MRC urged the Commission in its original comments to classify acquired exchanges according to their circumstances after the acquisition and not according to the circumstances that existed before the acquisition. This is an effective way for the Commission to promote competition in rural areas. Without the ability to operate under Track 3 rules, a rural carrier would have little or no incentive to acquire and improve services to rural exchanges.

[8] 7th Report and Order and Further NPRM in Docket CC 96-262, Reform of Access Charges Imposed by Competitive Local Exchange Carriers.

NTCA's comments are consistent with the comments of MRC, and MRC therefore joins in and supports NTCA's comments regarding Track 3 classification for rural exchanges acquired by rural companies.

NECA Participation for 251(h)(2) Exchanges

MRC believes that the intent of Section 251(h)(2) is to allow a CLEC to step into the position of the ILEC when its market penetration and service levels demonstrate that it is clearly the preferred carrier in the exchange. In order to complete the transition, it makes sense to have the 251(h)(2) exchanges participate in the NECA pools and tariffs just as any other ILEC under similar circumstances would. In this way, the support processes developed by the Commission to foster high quality service in rural areas are brought to bear. Our original comments call for this provision.

As pointed out in our original comments, the MRC Terry exchange has been declared an ILEC exchange for interconnection purposes. Terry is the first exchange to be declared an ILEC under Section 251(h)(2).

MRC joins in and supports NTCA's comments regarding NECA participation for exchanges that are reclassified under 251(h)(2).

Extension of the Rural Exemption

In its original comments MRC called for the Commission to apply the Track 3 access reduction rules to rural CLECs. In our argument, we discussed the rural exemption and the effective elimination of the exemption should the Commission adopt the access reduction scheme proposed in the Plan for rural CLECs.

The Commission adopted a safe harbor access charge rate level for rural facility based CLECs sometimes referred to as the rural exemption in its 7th Report and Order and Further NPRM in Docket CC 96-262, Reform of Access Charges Imposed by Competitive Local Exchange Carriers. Rural facility based CLECs meeting the criteria established in this Order are allowed to charge the appropriate NECA access rates without further cost substantiation. This Order had the effect of stabilizing the rural facility based CLEC market and reducing the requirement to recover high costs from end users.

The proposed Plan would revoke this safe harbor provision and require rural facility based CLECs to charge the same level of access as the largest ILECs.

The Plan fails to recognize the similar circumstances of rural ILECs and rural facility based CLECs. The Plan as filed recreates the situation that the Commission determined to be 'rather harsh'. MRC submits that the policy decisions determined in the Commission's Docket CC 96-262 Decision should be maintained. Furthermore, the Commission's NPRM in this proceeding did not raise the issue of whether the

Commission's policies related to rural facility based CLECs access rates should be revisited.

NTCA's comments argue for the same result, and MRC joins in and supports NTCA's comments regarding the extension of the rural exemption.

<u>The Plan is Incomplete</u>

In original comments, MRC pointed out the fact that the Plan, as proposed, was incomplete. As the Plan stands, all non-ILEC entities would be required to reduce their access rates according to the Track 1 rules without any means to recoup the shortfalls created by the access reductions. This would not only discourage any further investments and expansion in rural areas thereby limiting competitive choice in rural areas, but it would threaten the viability of already deployed investments and operations. We believe that this result is contrary to Commission's precedent and policy. The Commission must not adopt the Plan as filed.

The rules and procedures governing the computation and distribution of the RM amounts are defined only for ILECs, and the Plans intended distribution process of RM support to non-ILECs including rural facility based CLECs is not determined.[9] The proposed Plan simply states that the circumstances under which RM amounts will be available to non-ILECs will be determined in the future.[10]

It is absolutely essential that the Commission address this omission in detail before adoption of the Plan. The shortfall created under the current Plan for the MRC CLEC operation would range from approximately $350,000 annually at Step 1 of the Track 1 transition up to more than $3M annually at Step 4.[11] Such a shortfall would not only have a chilling effect on the company's future construction plans for the CLEC areas, it would jeopardize the viability of the existing CLEC operation. This result is totally unacceptable to MRC.

<u>Calculation of RM for New Rural CLECs or Rural CLECs Entering New Areas</u>

The RM is an access element that should be available to all carriers under the same conditions just as the other access elements are. Should a company initiate a new CLEC operation, there should be established guidelines governing the appropriate access rates that can be charged by the new entity including RM amounts. Additionally, should an existing rural CLEC expand its service area to include new rural exchanges, it must be permitted to increase its RM and other access charges to cover the needs of the new area.

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[9] The contribution mechanism required to fund the RM is also not established in the proposed Plan. However, this issue will need to be addressed for the entire industry, and MRC does not choose to comment on this issue at this time.
[10] Missoula Plan, Section VI.A.2.
[11] See MRC Comments, Appendix A.

The interstate and intrastate access rates that are in effect for a similar company must be used along with the access rates that would have been in effect for such a company at the start of the Plan. The company can then compute the access charge differential that would have existed had the company been operating or operating in the new area at the time that the Plan was established.

The Commission should establish a safe harbor number of access minutes per line that a company can use initially until it can establish its own ratio over a reasonable time. The RM can then be computed using the initial safe harbor minutes per line or the actual minutes per line established over a reasonable operating time. The RM amount is equal to access rate difference times minutes per line times lines in service at the end of the previous month.

Respectfully submitted,

Mid-Rivers Telephone Cooperative, Inc.

By Gerry Anderson

Gerry Anderson, General Manager
January 19, 2007

Attachment A

Implicit Subsidies in Local Rates

Local service pricing schemes in most, if not all, states are based on a principle of 'value of service'. The cost to provide service to a local exchange service area is generally not considered in pricing service for an individual exchange. The use of this fundamental pricing plan by the state regulatory authorities has not changed in decades.

Pricing is Proportional to Exchange Size

In a 'value of service' pricing scheme, the price of local service is proportional to the value of the local service provided and not to the cost of providing service. Traditionally, the price of local service has been and still is higher for lines that can call a greater number of local subscribers. This results in the price of urban services being higher than the price of rural service with a wide range of grades in between. The highest local rates are charged in the largest cities with the largest number of subscribers that can be called under the local rate while the lowest rates are charged in the smallest communities with the least number of subscribers.

Costs are Inversely Proportional to Exchange Size

The cost to provide service in an exchange service area is typically inversely proportional to the density of the customers within the service area, i.e. as the density of the service area increases, the cost to serve the area decreases. Since population density generally varies proportionally with the population of a service area, the cost to provide service is inversely proportional to the size of the local calling area. Therefore, while the prices for local service are proportional to the size of the calling area, the costs to provide that service are inversely proportional to the size of the calling area.

Urban to Rural Subsidies

The result is a significant subsidy to the rural areas from the urban areas. In large ILEC companies, like AT&T, that serve both urban and rural areas, the companies are typically expected and required by their state regulator to provide the subsidy required for the lower priced rural services implicitly from their own higher priced urban service rates. This implicit subsidy is undoubtedly significant, but hidden within the large ILEC and unmeasured. Smaller companies that serve rural areas exclusively on the other hand have no internal source from which to draw an implicit local service subsidy. Public policy however has typically required that their rural local rates conform with the value of service pricing scheme applied to the larger companies.